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REMARKS

The Examiner has rejected claims 1, 4 through 10, 18 and 19 under the principles of *res judicata* based on the decision of the Board of Patent Appeals and Interferences in the original application from which this RCE was filed, signing MPEP §706.07(h). However, 706.07(h), paragraph XI, after the decision by the Board, indicates that an RCE is improper if it is not accompanied by the fee or submission of a showing of facts, as noted in 37 CFR 1.114, which includes an amendment to the written description claims or drawings, new arguments or new evidence in support of patentability ... Claim 1 has been amended. Claims 4 through 10 depend from claim 1. Claim 18 has been amended and claim 19 depends from claim 18. In addition, applicant has submitted the Declaration of Paul Tilman, the Inventor of U.S. Patent No. 5,071,689, cited as an anticipatory reference in the appeal before the Board of Patent Appeals and Interferences on the basis that the Tilman '689 reference inherently teaches a recloseable fastening strip having an airtight seal. Since Tilman has provided a declaration stating that his recloseable fastener, as disclosed in the '689 patent, does not teach an airtight seal under any circumstances, the applicant respectfully submits that MPEP §706.07(h) has been complied with and that claims 1, 4 through 10, 18 and 19, as amended, should not be rejected under the principles of *res judicata* in view of the amendments to the claims and the newly submitted evidence of Tilman.

Double Patenting

Claim 18 stands rejected under obviousness type double patenting over claims 1 and 22 of U.S. Patent No. 6,059,457. The Examiner indicates that the conflicting claims are not identical. Accordingly, a terminal disclaimer is attached. The Examiner further indicates that claim 18 of the present application is anticipated by the '457 patent. Since rejection three (3) is

obviousness double patenting, applicant will direct its remarks to the rejection based on anticipation of claim 18 of the present invention *supra*.

Claims 1, 4 through 10, and 19 stand rejected under the judicially created doctrine of obviousness double patenting as unpatentable over claims 14 through 21 of '457 patent in view of Anderson 113 previously cited or Edelman '517. Again, a terminal disclaimer of the '457 patent, commonly owned by the assignee of the present invention, Com-Pac International, is attached hereto.

Claims 1, 4 through 10, 18 and 19 stand rejected under 35 U.S.C. §102(b) as being clearly anticipated by Tilman '689 for the reasons set forth in the board decision of July 11, 2003. Applicant respectfully traverses this rejection.

As noted by the Examiner, Paul Tilman, in his declaration of September 10, 2003, states, "the seal of the '689 patent is not airtight under any definition of airtight." The Examiner then goes on to state that he is not convinced that Tilman's definition of "airtight seal" is commensurate with applicant's definition as set forth in the specification of the present application because Tilman states, "an airtight seal is a seal that will at least prohibit the movement of atmospheric pressure, room temperature air molecules across the seal for an indefinite length of time." The Examiner then indicates that present application's definition is broader than this definition because the specification states, "inter-locking ribs are included on the profiles to create an airtight recloseable seal which is suitable for a wide range of applications," and, therefore, applicant's "wide range of applications" for their "airtight seal" is much broader in scope than air molecules at atmospheric pressure and room temperature as discussed by Tilman.

The Examiner has ignored the plain meaning of Tilman's statement that "the seal of the '689 patent is not airtight under any definition of airtight." Nevertheless, because the Examiner states that applicant specification fails to provide any specific definition of an airtight seal, the Specification has been amended to include, from *Webster's New Collegiate Dictionary*, the definition of airtight as "impermeable to air or nearly so." It is well settled that dictionary definitions provide evidence of a claim term ordinary meaning Texas Digital Systems v. Telegenix, Inc., 308 F.3d 1193, 1202 (Fed. Cir. 2002). Nevertheless, the issue is not whether Tilman and the present application have two (2) different definitions of airtight seal. Tilman has stated that his patent does not teach an airtight seal under any definition of airtight. Consequently, it is clear that, using either Tilman's definition, ambient pressure and temperature, or the definition of *Webster's New Collegiate Dictionary*, Tilman's reclosable fastener profile does not teach an airtight seal. The Examiner is suggesting that the present application has a broader of definition of airtight seal than Tilman. However, if Tilman's fastener strip will not provide an airtight seal under ambient room conditions, it certainly will not provide it under increased pressure or temperature. Accordingly, applicant respectfully requests reconsideration and allowance of claims 1, 4 through 10, 18 and 19.

It should be further noted that Claims 1 and 18 further include the terms "said compression mold and segment" which is clearly not taught, suggested or implied by Tilman.

Claims 1, 4 through 9, 18 and 19 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Howard, '914. This rejection is respectfully traversed. Applicant respectfully submits that Howard discloses a liquid tight not an airtight seal. The word airtight is not found in the Howard reference. Further, Howard teaches an apparatus performing a plastic bead seal at the junction of the fastener and the sidewalls of a plastic container, not a compression molded

seal as claimed in the present application. Accordingly, reconsideration and allowance is respectfully requested.

Claims 1, 4 through 10, 18 and 19 stand rejected under 35 U.S.C. 102(e) as being anticipated by the patent of Anderson '113. This rejection is respectfully traversed.

While the patent of Anderson discloses a zipper closure in combination with a plastic bag which is gas tight, the closure is gas tight by means of a gap filling fillet extending between the lowest of the lowermost fingers and the corresponding lower flat portion of the zipper closure, the fillet providing a gas type seal to prevent gas from leaking through the plastic bag. The fillet is formed of a different material than the zipper closure. In the present application, the ends of the zipper profile are compression molded to provide an airtight seal, and do not use a separate material of a higher flow rate than the zipper closure material. Accordingly, reconsideration and allowance is respectfully requested.

Claim 18 stands rejected under 35 U.S.C. §102(e) as being anticipated by Sprehe et al., '457. This rejection is respectfully traversed. As noted in this specification in claims of the '457 reference, the respective first ends and second ends of the first and second strips are joined by heat crimping. "Crimping" is defined by *Webster's New Collegiate Dictionary* as "to cause to become wavy, bent, or warped." The compression molding segments seal portion of claims 1 and 18 fuses the profile strips and substantially flattens the end seal portion to provide an airtight seal without distorting the ribs of the first and second profile strips outside of the fused section. Clearly this sealing using compression molding without distortion is not disclosed in Sprehe '457.

In addition, the '457 reference is owned by the same assignee as the present application, Com-Pac International, Inc. Further, Donald Wright is a co-inventor of both applications. It is

respectfully submitted that a 37 C.F.R. §131 or §132 Declaration would be inappropriate under these circumstances. The Examiner is suggesting that Wright, Pemberton and Hankins swear back of the Sprehe et al. reference, or that Sprehe, Siebert and Wright swear that the unclaimed invention of Sprehe et al. was derived from Wright, Pemberton and Hankins. However, it is believed that the subject unclaimed disclosure in Sprehe '457 was derived from the work of Donald Wright, a co-inventor of both inventions. Accordingly, a 132 Declaration would be inappropriate. Reconsideration and allowance are accordingly respectfully requested.

Claims 1, 4 through 10, and 19 stand rejected under 35 U.S.C. 103 as being unpatentable over Sprehe et al. '457, in view of Anderson, 113 or Edelman '517. This rejection is respectfully traversed. As noted above, Sprehe et al. does not disclose compression molding of the ends of the seals or distortion-free sealing of the fastener profiles. The Examiner has cited Anderson '113 and Edelman '517 as disclosing that it is known in the art to provide a continuous supply of first and second profile strips. However, Edelman '517 discloses stitched fastener including a removable chain stitch and a tear strip for facilitating manual opening of the primary fastener. The recloseable sack also includes a secondary recloseable fastener having a pair of interlocking profile strips that are attached to the lower inner wall portions to the upper edge of the sack walls out board of the stitch fastener. Clearly the fastener of the stitched fastener of Edelman could not be used to make airtight recloseable bags since the stitching punches holes in the material and prevents an airtight seal.

Anderson '113, although it does disclose a continuous supply of zipper closure, also discloses a preheat crush zone die head 108, 107, which sufficiently melts the fillet material until the fillet material reaches a liquefied state and smashes the profile of the zipper closure in the area where the side edges of the bags 10a, 10b, 10c will be located. Thus, Anderson is contrary

to the compression molding of the present invention in which the profile is not distorted after sealing and teaches an alternative method of sealing fastener strips to make them gas tight. Accordingly, reconsideration and allowance is respectfully requested.

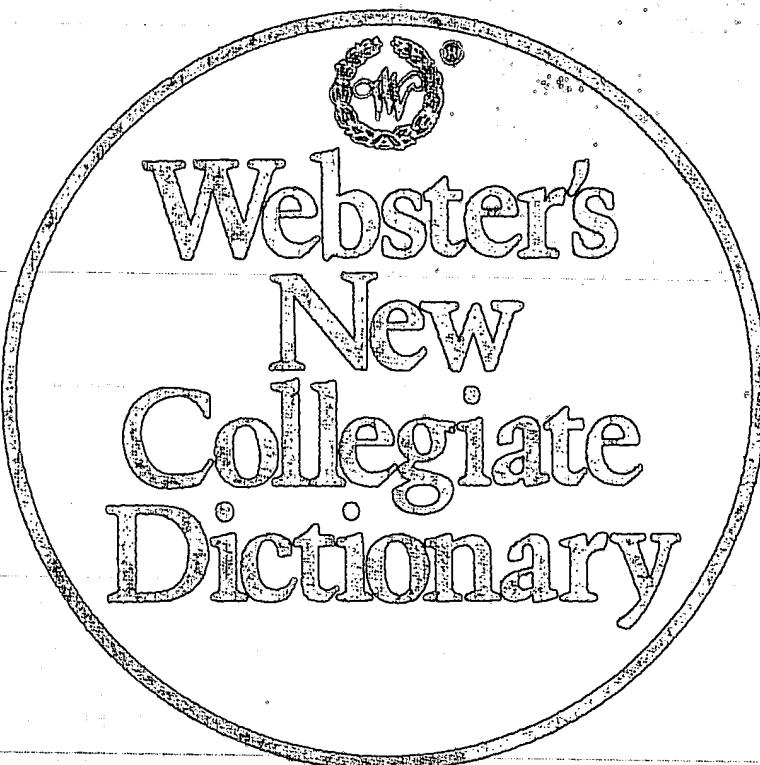
In view of the above remarks, reconsideration allowance is respectfully requested. In the event that the Examiner maintains any of the above rejections, applicant respectfully requests that this amendment be entered for purposes of appeal.

Respectfully submitted,

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Date: August 30, 2004

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